

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6142

PETITION OF SPEKE WILSON

(Hearing held June 28, 2006, Worksession held July 12, 2006)

OPINION OF THE BOARD

(Effective date of Opinion, September 8, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a two-story addition that requires a variance of five (5) feet as it is within twenty (20) feet of the front lot line setback (Yale Avenue). The required setback is twenty-five (25) feet.

Rick Matus of Case Design/Remodeling, Inc., appeared with the petitioner at the public hearing.

The subject property is Lots 7 and 8, Block 23, National Chatauqua of Glen Echo Subdivision, located at 7309 University Avenue, Glen Echo, Maryland, 20812, in the R-60 Zone (Tax Account No. 00510053).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the enclosure of two existing 26.3 x 5.9 foot covered porches.
2. The subject property is a corner lot located at the intersection of University and Yale Avenues. The petitioner testified that the existing house was built in 1918 prior to the establishment of the County's zoning regulations and that the existing dwelling is a non-conforming structure that is currently sited in the required setbacks for the subject property. See Exhibit Nos. 4(a) [site plan], 7(b) through 7(d) [photographs].
3. The petitioner testified that the proposed construction will enclose two existing covered porches and that the porches are unique to the property as no other homes in the immediate area share this

characteristic. The petitioner testified that the plat for the subject property was recorded in 1891 and that the proposed construction will not expand or increase the footprint of the existing house. The petitioner testified that his lot is 5,625 square feet and that it is substandard for the R-60 Zone. See Exhibit No. 14 [extract from County Land Records].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property is 5,622 square in feet in area and that the lot is substandard for the R-60 Zone. The Board finds that the property was developed and recorded prior to the establishment of the County's Zoning Ordinance and that the subject property has an existing non-conforming dwelling that is currently located in the required setbacks for the zone. The Board finds that the proposed construction will not expand or increase the existing footprint of the house.

The Board finds that these are exceptional circumstances unique to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a two-story addition is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction will not materially impact the view from the surrounding properties and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of five (5) feet from the required twenty-five (25) foot rear lot line setback for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 4(b) and 5(a) through 5(j).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of September, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.